

**M. ROBERT KESTENBAUM, LLC  
PATENT AND TRADEMARK MATTERS**

**FACSIMILE TRANSMITTAL SHEET**

TO:	FROM:
Examiner Clark Dexter	M. Robert Kestenbaum
COMPANY:	DATE:
Commissioner for Patents	1/27/2009
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
(571) 273 4505	10
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
571-272-4505	(MM) 53 928
RE:	YOUR REFERENCE NUMBER:
Proposed Supplemental Amendment After Final Action	09/551,252

## NOTES/COMMENTS:


Dear Examiner Dexter:

I am faxing a proposed Supplemental Amendment after Final Action for your review prior to our telephone discussion today. As previously noted, the discussion will include yourself, me, and Mr. Jochen Maser, the inventor's attorney in Germany. Please review this proposed Supplemental Amendment After Final Action prior to our telephone discussion today. I have been unable to connect with you by telephone, but you had noted that today prior to 10:30 AM EST would be a good time for a discussion when we previously spoke last Thursday.

It is our intention to discuss amended claim 39 and the specification with you further now that you have reviewed the DVD submitted on 10/08/2008. We look forward to the opportunity to discuss this case further with you, and appreciate your time and consideration.

We respectfully believe that the current submission will answer your questions and place the case in condition for allowance. We will formally make a submission after our discussion today.

Sincerely,



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Response Under 37 CFR 1.116  
Expedited Procedure  
Examining Group 3724

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Re: US Patent Application 09/551,252  
Filed April 18, 2000  
Applicant Brodbeck  
Art Unit 3724  
Examiner Clark F. Dexter  
Telephone 571-272-4505  
Attorney Docket (MM) 53 928

Mail Stop – Amendment After Final Action  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**Proposed Supplemental Amendment After Final Action**

Dear Examiner Dexter:

The present Proposed Supplemental Amendment After Final Action is submitted to the Examiner for discussion purposes, and may be submitted formally with the pertinent fees after discussed with the Examiner. This further responds to the outstanding final office action, mailed 07/28/2008 and is submitted prior to a telephone discussion with you scheduled for today, 1/27/2009 at 10:00 AM EST. I will call to discuss the case with you. The attorney representing the inventor in Germany, Mr. Jochen Maser, will also be on the line for the discussion. I give full permission, in my capacity as the attorney of record represent the inventor before the USPTO, for you to discuss the case with Mr. Maser.

The claims are amended in this submission, and hence, please note the changes to independent claim 39 prior to our discussion today. The amendments to the specification submitted on 04/03/2008 should be examined with this submission. A complete set of the claims, with status identifiers, is set forth on the following pages.

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1-16 (Canceled)

17. (Canceled)

18. (Previously Presented) The apparatus according to claim 39, further comprising a flange that is removably fastened to said slide

19. (Canceled)

20. (Withdrawn) The apparatus according to claim 39, wherein said ejector has a driver element extendable in a direction toward the counter-holder and engaging a seating of the ejector sleeve that is arranged to be displaceable along a counter-holder.

21. (Withdrawn) The apparatus according to claim 20, wherein said driver element comprises a bolt.

22. (Withdrawn) The apparatus according to claim 39, wherein a cutting knife of the at least one cutting tool is fixedly or rotatably arranged on a mounting of said slide, said rotatable arrangement having a roller bearing.

23. (Withdrawn) The apparatus according to claim 39, wherein a cutting knife of at least one cutting tool is arranged free wheeling.

24. (Withdrawn) The apparatus according to claim 39, wherein a cutting knife of the at least one cutting tool is rotatable and is driven with a preselectable rotation speed.

25. (Withdrawn) The apparatus according to claim 39, wherein said at least one cutting tool is resiliently, compliantly mounted in said flange against a feed movement of said cutting knife.

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26. (Withdrawn) The apparatus according to claim 25, wherein said at least one cutting tool has an adjustable abutment force.
27. (Withdrawn) The apparatus according to claim 25, further comprising a recognition switch provided on said flange that senses a beginning of said tube during travel of said slide into a first cutting position.
28. (Withdrawn) The apparatus according to claim 27, wherein said recognition switch is arranged on said slide at an acute angle to an end face of said tube.
29. (Withdrawn) The apparatus according to claim 39, wherein said tube is mounted free wheeling on said counter-holder and is rotated by power-operation by a left and a right guide roller.
30. (Withdrawn) The apparatus according to claim 29, wherein said left and right guide roller, in the case of a tube internal diameter that is at least greater than the diameter of said counter-holder, engage on said tube in a manner such that said tube is supported on said counter-holder.
31. (Withdrawn) The apparatus according to claim 29, wherein said left and right guide roller, in the case of a tube internal diameter that substantially corresponds to a diameter of said counter-holder, rests on said tube in a position acting against a cutting force.
32. (Withdrawn) The apparatus according to claim 31, wherein at least one of said left and right guide roller is power-operated.
33. (Withdrawn) The apparatus according to claim 29, further comprising supporting arms on which said left and right guide rollers are pivotably arranged

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around a respective shaft, which left and right guide rollers are movable by a power element and a gearwheel pair coupled to said supporting arms.

34. (Withdrawn) The apparatus according to claim 33, wherein said power element is driven with compressed air and an operating pressure for the positioning movement of the power element is settable.

35. (Canceled)

36. (Withdrawn) The apparatus according to claim 32, further comprising a stepping motor and a threaded spindle wherein said actuating drive comprises said stepping motor and drives said threaded spindle with an interposition of a coupling.

37. (Withdrawn) The apparatus according to claim 28, wherein said recognition switch comprises a proximity switch.

38. (Withdrawn) The apparatus according to claim 32, wherein said guide rollers are provided on said supporting arms which are arranged pivotably around a respective shaft and which are synchronously movable by a power element and a gearwheel pair coupled to said supporting arms.

39. (Currently Amended) Apparatus for cutting tubes comprising:  
a counter-holder arranged to receive a tube,  
said counter-holder having an ejector sleeve mounted thereon, wherein  
said ejector sleeve is movable along the counter-holder,  
~~at least one~~ a cutting tool that is movable to a cutting position during a cutting process,

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a slide carrying the ~~at least one~~ cutting tool and carrying an ejector, having  
a driving element that can travel in a direction toward the counter-holder and  
~~engaging~~ a seating of said ejector sleeve, and

a programmable control to control the movement of said slide, said cutting  
tool and said ejector sleeve,

wherein the movement of said slide is controlled between an initial  
position and an ejector position and for cutting the tube, the cut-off lengths of  
tubular sleeves are freely settable by moving said cutting tool on said slide and for  
ejecting the cut-off lengths of tubular sleeves, the slide is positioned in an ejector  
position for actuating said driving element by engaging to engage said seating of  
said ejector sleeve to strip off the sleeve or sleeves from the counter-holder when  
moving the slide from the ejector position to the initial position.

40. (Previously Presented) The apparatus according to claim 39, wherein said slide is  
moved on said guide parallel to said counter-holder by an actuating drive in  
dependence on a programmable cut length of said tube.

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#### Remarks

The Examiner has maintained that he believes the claims would be allowable if they overcame the rejections under 35 USC 112. Specifically, the Examiner seems to be of the opinion that the features of the claims are not supported in the specification. The following explanation is provided, with reference to where the features of the claims are supported in the specification. It is Applicant's attorney's belief that the following explanation, together with the telephone discussion that will occur today, should place the claims in condition for allowance.

Claim 39 is amended to clarify how the apparatus works. The Amendment to claim 39 is derived from the specification on page 2, lines 17 to 25 and page 5, lines 5 and 6. Further, please refer to page 7, lines 15 to 26.

Applicant's attorney believes that the Examiner may not be able to visualize how the invention works because the units 30 and 53 were included in claim 39, although 30 and 53 refer to alternate embodiments. Thus, unit 35 should not include units 30 and 53 for the purposes of discussing the embodiment set forth in amended claim 39, and claim 39 is clearly supported in the specification. Please see page 6, lines 17 to 18 of the specification.

Applicant's attorney wishes for the Examiner to note that the device works with a single spindle. The single spindle 16 is provided for moving the unit 35 between the initial position 23 and the ejector position 24.

With respect to the ejector assembly, the starting position is that the ejector sleeve is positioned on the counter-holder 13 in an initial position. This initial position of the sleeve is derived from the initial position 23 of the unit 35. Please refer to page 7, lines

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15 to 26. After the bolt is removed out of the seating 42 of the sleeve, a new tube is positioned onto the counter-holder 13 and the sleeve 41 is automatically pushed by the new tube into an ejector position on the right side of the device. After cutting the cut-off lengths of the tubular sleeve, the unit 35 is positioned in the ejector position 24. The movable bolt 39 engages into the seating 42 of the sleeve and then the unit 35 is moved from the ejector position 24 to the initial position 23. Then the sleeve 41 is automatically guided along the counter-holder 13 to the right end of the counter-holder 13. This is the movement circle of the sleeve 41.

The Examiner questioned whether there was any prior art that has a rail with an ejector. The ejector according to the invention is merely a sleeve, which is slide guided on the counter-holder. Applicant can amend the lead line 21 to Figure 2 as an arrowhead if the Examiner wishes.

The Examiner appears to want further clarification of the description of the bolt 39, and Applicant does not understand why this feature is not understood or is not believed to be supported in the specification. On page 7, lines 16 to 17, the specification describes that the ejector has a movable bolt, which is movable in the direction towards the counter-holder or the ejector sleeve. Applicant believes that this describes the bolt 39, and would appreciate the Examiner further clarifying his question after reviewing page 7, lines 16 to 17 of the specification.

The Examiner states that he does not see how the ejector can move on the rail and get past 30 and 35. Applicant respectfully believes that the Examiner is not visualizing the invention as described in the specification and set forth in the claims. Units 30 and 35

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are alternative embodiments. Even if there is an automatic cutting and removal of the sleeves, units 30 and 35 are omitted in presently amended claim 39.

It is possible to narrow and amend the wording of claim 39 to make it refer to only one cutting tool, if the Examiner so desires.

With respect to the Examiner's suggestion to include a prior art reference for moving the slide from the left to the right, Applicant refers to the cited prior art from the Examiner according to US 3,481,234, which shows a cutter assembly 14, which is movable along a slide bar. This slide bar has a swallow-tailed guiding.

Applicant's attorney requests that the Examiner review this Supplemental Amendment After Final Action prior to our discussion at 10:00 AM EST today, and wishes to express his appreciation for including Mr. Jochen Maser, the inventor's German attorney, in the discussion today.

Applicant's attorney wishes to express his sincere gratitude to the Examiner for agreeing to participate in the discussion that occurred on 10/21/2008.

This Amendment After Final Action responds to the outstanding office action. Applicant may further amend the claims to place the claims in condition for allowance or better condition for appeal, after the discussion with the Examiner. This submission does not add new matter, and Applicant will not add new matter after the discussion with the Examiner.

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Applicant's attorney believes that this submission places the claims in condition  
for allowance or better condition for appeal.

Wherefore, further consideration and allowance of the claims is respectfully  
requested.

Respectfully submitted,



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I hereby certify under 37 CFR §1.8(a) that this correspondence is being submitted to the  
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22313-1450 on \_\_\_\_\_, fax number 571-273-8300.

M. Robert Kestenbaum

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